

FILED

JUL 26 1990

JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1989

RICHARD LEE SANDS

PETITIONER

versus

COMMONWEALTH OF KENTUCKY

RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF KENTUCKY

Respectfully submitted,

FREDERIC J. COWAN
ATTORNEY GENERAL

Pamela J. Murphy

PAMELA J. MURPHY
ASSISTANT ATTORNEY GENERAL
CRIMINAL APPELLATE DIVISION
CAPITOL BUILDING
FRANKFORT, KENTUCKY 40601-3494
(502) 564-7600

COUNSEL FOR RESPONDENT

QUESTION PRESENTED

WHETHER A WARRANTLESS ENTRY AND SEARCH BY LAW ENFORCEMENT OFFICERS VIOLATES THE FOURTH AMENDMENT PROSCRIPTION OF "UNREASONABLE SEARCHES AND SEIZURES" WHEN THE ENTRY AND SEARCH ARE BASED UPON THE CONSENT OF A THIRD PARTY WHOM THE POLICE, AT THE TIME OF ENTRY, REASONABLY BELIEVE TO POSSESS COMMON AUTHORITY.



TABLE OF CONTENTS

	<u>Page</u>
QUESTION PRESENTED.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	iii
OPINION BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL PROVISIONS INVOLVED.....	2
COUNTERSTATEMENT OF THE CASE.....	2-4
REASON FOR DENYING CERTIORARI.....	4-6
CONCLUSION.....	6

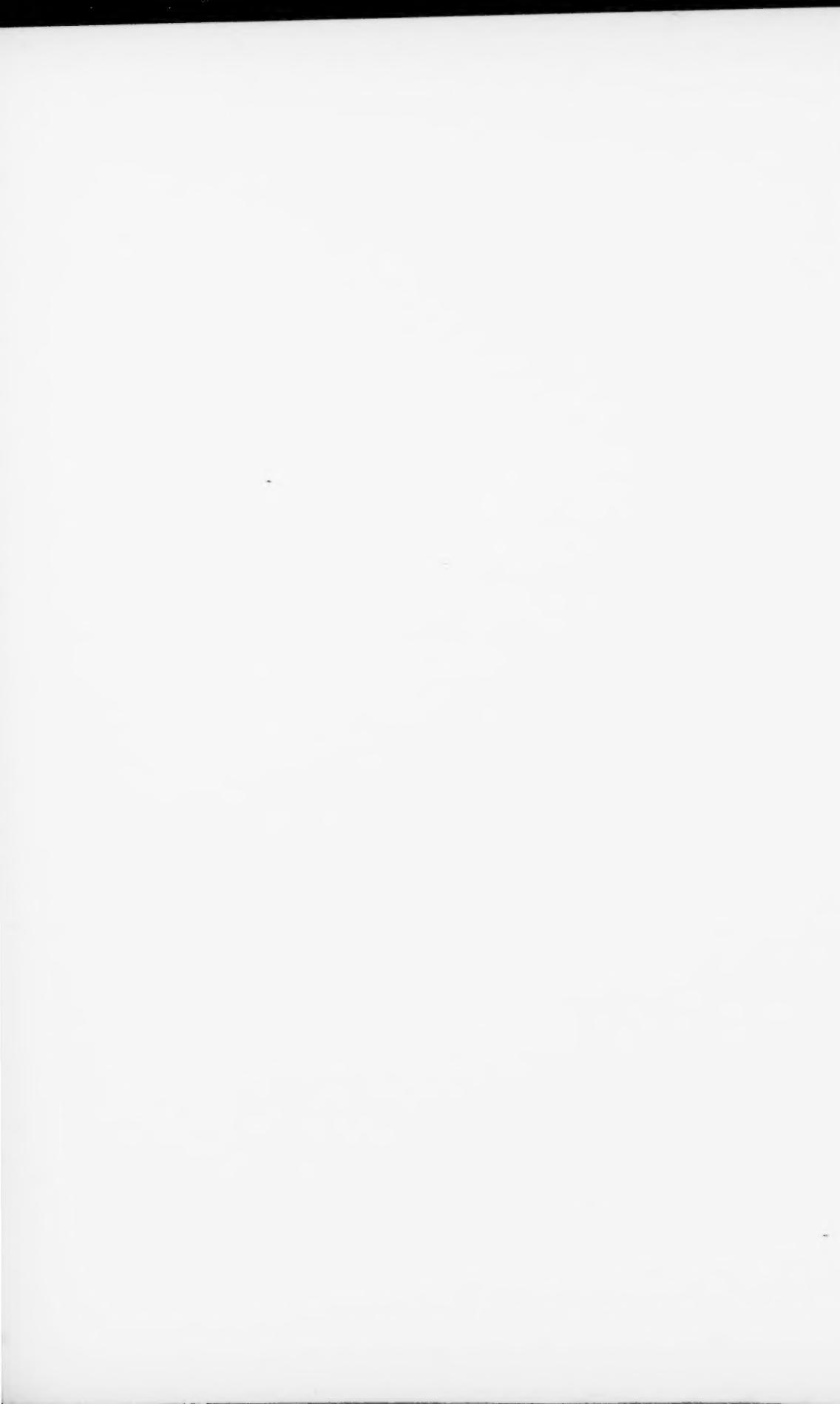


TABLE OF AUTHORITIES

<u>CITATIONS</u>	<u>Page</u>
<u>Illinois v. Rodriguez.</u> U.S. ____ (1990) (No. 88-2018 rendered June 21, 1990).....	5,6
<u>Rawlings v. Kentucky.</u> 448 U.S. 98 (1980).....	4,5

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1989

RICHARD LEE SANDS

PETITIONER

versus

COMMONWEALTH OF KENTUCKY

RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF KENTUCKY

OPINION BELOW

The opinion below is correctly set forth in
petitioner's appendix.

JURISDICTION

The opinion of the Kentucky Court of Appeals
was rendered November 3 1989. The Kentucky
Supreme Court denied Sands' Motion for
Discretionary Review on March 7, 1990. The
jurisdiction of this Court is invoked pursuant to
28 U.S.C. §1257.



CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States

Constitution which states:

The right of the people to be secure in their persons, houses, papers, and affects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing a place to be searched, and the persons or things to be seized.

COUNTERSTATEMENT OF THE CASE

On April 15, 1988 petitioner's estranged wife, Alice Sands, contacted the Commonwealth Attorney's Office and the Auto Theft Division of the Jefferson County Police Department concerning a white Toyota pick-up truck. Ms. Sands told authorities that she became suspicious about the truck due to the presence of a New Jersey license plate in the back of the truck while a Florida license plate was taped to the window of the truck. The truck was in a garage at a house where she and petitioner had lived.



Ms. Sands executed a consent to search form so that the police officers could enter the garage and examine the truck. The officers identified the truck as the truck reported missing by David Dierson on March 14, 1988.

Alice Sands testified that on April 15, 1988 she consented to the search of the house and garage located at 4102 Wilmouth Drive. Sands stated that she was married to the petitioner, that she lived at the house during the marriage and that she had resided at the house off and on. On April 15, 1988 Ms. Sands had personal property at the house and keys to the house and garage. Ms. Sands also had keys to the truck which petitioner told her he bought for her for her birthday.

Police Sergeant Chesson testified that he believed that Ms. Sands' interest in the property was either as an owner or a resident. Ms. Sands told Sergeant Chesson that she was the owner and that she had lived there over a period of time.

Ms. Sands' statements to police were supported by the fact that she had keys to the house and garage in her possession.

On November 3, 1989 the Kentucky Court of Appeals rendered an unpublished opinion affirming petitioner's conviction.

REASON FOR DENYING CERTIORARI

I.

PREVIOUS DECISIONS OF
THIS COURT ARE
CONTROLLING.

In the present case the Kentucky Court of Appeals held: (1) that petitioner did not have a legitimate expectation of privacy in the premises which were searched, and (2) that police reasonably believed that Ms. Sands had authority to give consent for the search. Previous decisions of this Court are controlling in the present case.

In Rawlings v. Kentucky, 448 U.S. 98 (1980) the Court set forth three factors to consider in determining whether a defendant has a legitimate

expectation of privacy in the premises. The three factors are (1) whether the defendant had a right to exclude others from the property, (2) whether other persons had free access to the property, and (3) whether the defendant had the expectation that the property item would remain free from intrusion. The Kentucky Court of Appeals applied the Rawlings test and determined that petitioner did not meet any of the three factors. The house and garage did not belong to Petitioner. Other members of petitioner's family and his wife possessed keys to the house. Based upon the facts before it, the Kentucky Court of Appeals determined that petitioner's expectation of privacy, if any, was not justified. The decision of the Court in Rawlings, supra is controlling and was applied in petitioner's case.

In Illinois v. Rodriguez, ____ U.S. ____ (No. 88-2018 rendered June 21, 1990), this court held that a warrantless entry is valid when based upon the consent of a third party whom police, at the

time of entry, reasonably believe to possess common authority over the premises. The Kentucky Court of Appeals held that the police officers reasonably believed that Ms. Sands had authority to give consent for the search. Therefore, the decision of this Court in Rodriguez is controlling.

CONCLUSION

For the above stated reasons, the petition seeking a Writ of Certiorari should be denied.

Respectfully submitted,

FREDERIC J. COWAN
ATTORNEY GENERAL

Pamela J. Murphy
PAMELA J. MURPHY
ASSISTANT ATTORNEY GENERAL
CRIMINAL APPELLATE DIVISION
CAPITOL BUILDING
FRANKFORT, KENTUCKY 40601-3494
(502) 564-7600

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

As a member of the Bar of the United States Supreme Court, the undersigned hereby certifies that on the 26th day of July, 1990, three copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari were mailed first-class postage prepaid to Hon. G. Murray Turner, 440 South Seventh Street, Suite 300, Louisville, Kentucky, 40203.

Pamela J. Murphy
ASSISTANT ATTORNEY GENERAL